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REPRINTED FROM POLITICAL SCIENCE QUARTERLY
VOL. XXXVIII, NO. 1, MARCH, 1923

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The California Land Laws

I

DISSATISFIED with half-measures, the Exclusion League showed no disposition to give the Gentlemen's Agreement a trial.[1] It had no faith in the "honor" of the Japanese government, and it placed little hope in an agreement which was modeled after the signally unsuccessful "understanding" of 1900. In the first annual convention of the League, held in Seattle, February, 1908, a memorial addressed to Congress was adopted which declared against "any agreement which will permit the ruler of any foreign country to make stipulations as to what class of persons and in what numbers shall leave said foreign country for the purpose of immigration to the United States."[2]

Neither was the State legislature pleased. It shared the Exclusion League's distrust of the Agreement as a means of prohibiting future immigration. Furthermore, it considered the Japanese already on the Pacific Coast a "menace" to American life. The Gentlemen's Agreement had nothing to do with the latter problem. And the legislature was insistent that this aspect should also be solved. It had no right directly to expel the Japanese or any one else from the State.[3] But it attempted to accomplish the same end by making conditions so disagreeable for the Japanese that they would "voluntarily" leave. By the agitation which inevitably accompanies the passage of irritating legislation, it also hoped to arouse an apa-

[1] See "The Development of Anti-Japanese Agitation in the United States I", POLITICAL SCIENCE QUARTERLY, vol. XXXVII, pp. 605-638.

[2] *Immigration Commission Reports,* vol. 23, p. 170.

[3] *In re Ah Fong,* 3 Sawy. 144. Measures indirectly excluding the Chinese, by head-taxes, etc., have been also declared unconstitutional. See Coolidge, *Chinese Immigration* (1909), chap. v.

thetic country to the necessity of "solving" California's racial problem.

In the 1909 session of the legislature about seventeen anti-Japanese measures were introduced. These were narrowed down to three bills: (1) The Drew Alien Land Law, which compelled every alien landholder[1] to become a citizen within five years or dispose of his holdings—a measure which would effectually exclude the Japanese from ownership as they could never become citizens;[2] (2) the Anti-Japanese School Bill, which provided for the segregation of Japanese children in the public schools—a revival of the old agitation; and (3) the Municipal Segregation Bill which authorized municipalities, in order to "protect the health, morals and peace of their inhabitants", to restrict "undesirable, improper and unhealthy persons" within certain prescribed districts.[3]

At the intervention of Governor Gillett and of President Roosevelt,[4] these bills were finally dropped, although not without a good deal of grumbling. One assemblyman declared, "Since yesterday I have changed my views. I thought there were three departments in this Government, but I find that I was mistaken. I recognize the error of my youthful belief. I know that the Legislature and the Executive are one, or rather that the Executive is the Legislative." The only anti-Japanese action taken by the legislature was a resolution advocating the extension of the Chinese exclusion laws to the Japanese,[5] and

[1] The early hostility of political parties toward alien land ownership may be seen in Davis, *Political Conventions in California*, pp. 458, 529, 548.

[2] Federal courts have ruled that Japanese are not "free white persons" and therefore not eligible to citizenship under our naturalization laws. In November, 1922 the U. S. Supreme Court confirmed these decisions. *Ozawa v. the U. S.*, 43 Sup. Ct. Rep. 65. For a detailed discussion of this and other legal questions, such as dual citizenship, the treaty of 1911, and anti-alien land legislation, see R. L. Buell, "Some Legal Aspects of the Japanese Question", *American Journal of International Law*, January, 1923.

[3] Hichborn, *Story of the California Legislature of 1909*, pp. 202 *et seq.*

[4] See Roosevelt's letter to Mr. P. A. Stanton, speaker of the Assembly. *Theodore Roosevelt—An Autobiography*, pp. 382-384. On Roosevelt's views regarding exclusion at this time, see his letter of Jan. 29, 1909, to Congressman William Kent, reprinted in "Japanese Immigration and Colonization", *Senate Doc. No. 55*, 67th Cong., 1st session, p. 62.

[5] Joint Resolution, *California Statutes*, 1909, p. 1346.

a law appropriating funds in order that the State Labor Commission might collect statistics concerning them.[1]

Another source of agitation was found in the launderers. In March, 1908, an "Anti-Japanese Laundry League" was organized to protect white laundries from yellow competition. Laundry proprietors and employees paid regular dues to this organization. The League attempted to prevent the issuance of licenses to the Japanese, to reduce their patronage, and to prevent them from securing laundry equipment.[2] Billboard advertising was skillfully utilized. One poster read:

Foolish woman!
Spending your man's
Earnings on Japs.
Be fair, patronize
Your Own.
We support You.

From the very start, it is evident that neither the laboring men nor the politicians were satisfied with the Gentlemen's Agreement.

California's apprehension in regard to the Japanese was further aroused by the negotiation of a new treaty with Japan in 1911. It will be remembered that the treaty of 1894 contained a provision at the end of Article II which virtually said that each country might exclude the laborers of the other. The Japanese government had strenuously objected to this provision, and finally agreed to it only because the removal of extraterritoriality in Japan depended on the ratification of this treaty. Shortly afterward, Count Hayashi wrote in his *Secret Memoirs*, "In a few years, the time will come for the denunciation of that treaty, and a new treaty will be made, which will have no restriction on the freedom of the Japanese to immigrate to America."[3] This prophecy proved to be correct. The Treaty of 1911 (Article 1) read, "The citizens or subjects

[1] *Ibid.*, p. 227.

[2] *Immigration Commission Reports*, vol. 23, pp. 195-196.

[3] *Secret Memoirs of Count Tadasu Hayashi* (1915) edited by A. M. Pooley, p. 249.

of each of the high contracting parties shall have liberty to enter, travel and reside in the territories of the other. . . ." No qualification in regard to the admission of laborers was made. The only safeguard against immigration was the Declaration accompanying the treaty, signed by Count Uchida, the Japanese Ambassador to America, which stated that Japan would continue to enforce the Gentlemen's Agreement.[1] The elimination of the exclusion provision of 1894 from the treaty of 1911 alarmed the California legislators, who believed that, despite the Declaration, we had now surrendered the control of our borders to the Japanese government.[2] The legislature was in session when the Japanese treaty was pending. Naturally, vigorous opinions were expressed in regard to its terms. The senate went so far as to pass a land bill denying to aliens ineligible to citizenship the right to hold land, by a vote of 29 to 3. But at the intercession of President Taft, the legislature finally dropped the measure.

II

A presidential year came in 1912. The Republican party had been in power at Washington since 1896. It was also in control of the California legislature. Consequently, President Roosevelt had been able to restrain the latter body whenever its anti-Japanese measures threatened to embarrass the federal government. This, despite the bad grace with which the legislature had usually marred its acquiescence. Not that the Democrats were inspired by any loftier motives than the Republicans—on the contrary, they seized upon the timorous restraint of their opponents as a high horse upon which they themselves might ride to power. In the 1912 campaign the state Democratic party declared that Roosevelt believed that "the Japanese should be allowed to overrun the lands in California", and "that grown Japanese men should be allowed to mingle in the public schools with white boys and girls of tender years"!

[1] See Charles, *Treaties and Conventions, etc. of the United States*, p. 82.

[2] Roosevelt also thought the treaty to be a mistake.—*Autobiography*, p. 389.

Such sabotage had no effect on the smoothly greased wheels of Hiram Johnson's political machine. In the elections of 1912 the Progressives carried the state for Roosevelt, and the state legislature became Progressive and Republican. But at Washington, a Democrat, Woodrow Wilson, had driven the Grand Old Party from power. Never before during the Japanese controversy had a Republican (or Progressive) legislature existed in Sacramento simultaneously with a Democratic President in Washington. Furthermore, California's Governor, Hiram Johnson, apparently had an eye on the Presidential chair. Consequently, the legislature which had hitherto bowed to the will of President Roosevelt now was to treat the remonstrances of Washington, with respect, but with total disregard.

When the Sacramento legislature was convened in the winter of 1913, about forty anti-Japanese measures were introduced. Many of them dealt with the right of aliens to own land. After conducting hearings on these bills, the Judiciary Committee of the assembly reported out a measure, on April 2, 1913, which declared that: (1) an alien might acquire real property and hold it for one year, (2) he might lease land for five years, (3) corporations, a majority of the stock of which was owned by aliens *ineligible to become citizens*, were declared to be aliens.[1] With the exception of the last provision, this bill treated all aliens alike. For this very reason, the measure was vigorously opposed by assemblymen from districts in which foreign capital was invested. But despite their objections, the assembly passed the bill in its original form.

Likewise, the senate Judiciary Committee framed a law which was even less discriminatory than the Assembly bill. It fixed the leasing period at three years and also excluded from the rights of ownership all corporations the majority of stock of which was owned by aliens of whatever race. On the 18th of December, Secretary Bryan telegraphed that the senate bill was greatly to be preferred over that of the assembly. He advised especially against the use of the words, "ineligible to citizenship."

[1] Hichborn, *Story of the California Legislature for 1913*, p. 236.

If this bill had been enacted, it would have been unobjectionable from the diplomatic standpoint. It could not have become by any possible interpretation a source of international dispute; and it would have protected the resources of California more thoroughly than a measure limited merely to "aliens ineligible to citizenship"—or the Japanese. But the California senate would not have it so. Many of its politicians wished to make out of the Japanese question an international issue—otherwise they would attract little notoriety. Furthermore, European capitalists did not relish the loss of possible investments in California, especially in minerals and oil. Consequently, they organized a powerful lobby which was successful in causing the state senate to defeat the non-discriminatory bill.[1] Just what European interests participated in this lobby, it is difficult to determine. But in 1913, Andrew Weir, a large ship-owner in England, representing a prominent group of Englishmen, undertook to gain control of the Union Oil Company of California. This group actually purchased twenty-five per cent of the company's stock and secured an option on the remainder.[2] The passage of a land law which applied to all aliens would have prevented the acquisition of the Union Oil Company by this English syndicate. It would have prevented the operation of another alien corporation, the Royal Dutch Shell Company, which became incorporated on July 30, 1915. It would have prevented the operation of new mines, in Shasta County, by the Mountain Copper Company, a British syndicate which owns one of the largest smelters in the state.

Whatever these interests were, they brought tremendous pressure to bear on the senate. As a result, that body amended previous measures so as to exempt practically all European and Canadians from their operation.[3] The bill as it now stood permitted aliens "eligible to citizenship"—and no others—to own

[1] Hichborn, *op. cit.*, p. 243.

[2] This option expired on the outbreak of the war.

[3] It made three amendments: (1) corporations, the majority of the stock of which was held by citizens eligible to citizenship, might hold land; (2) aliens eligible to citizenship might also own mining and oil-well property; (3) the leasing period was limited to four years.

mining and oil-well property. This discrimination against aliens who could not become citizens, obviously the Japanese, was immediately protested by President Wilson. In a telegram he declared, "Invidious discrimination will inevitably draw in question the treaty obligations of the Government of the United States. I register my very earnest and respectful protest against discrimination in this case." On the 23rd of April, the President again wired that he could not understand the situation and asked permission to send Secretary of State Bryan to Sacramento.

For some strange reason, the legislature did not take umbrage at his request; and both houses dispatched an invitation to Mr. Bryan to confer with them. The Secretary arrived in Sacramento on April 28th, and stayed for about a week. But all of his efforts to obtain the passage of a land law which would not discriminate against the Japanese failed. He left Sacramento a defeated man. His visit probably was a mistake. Very likely, if Mr. Wilson had kept his hands off a Republican legislature, it would not have dared to pass legislation bound to cause international trouble. But the state legislature had been balked by a Republican President for at least six years. Each time that it had withdrawn anti-Japanese legislation it had felt humiliated; yet because of the mutual party interests in state and federal government it had obeyed. Now, however, there was no reason why it should suffer yet another rebuke from a President who had come to power because of a division in Republican ranks. Furthermore, Japan demanded that its rights be redressed. If there is anything which disgusts a California politician—and indeed many of its people—it is talk about the "rights of Japan." In the face of the protests of a Democratic President and of an "impudent" Japan, a Republican legislature believed that it could never face "the people at home" if it acquiesced in the demands of both. Consequently, the senate stood firm.

But in order to make the proposed legislation conform to the treaty obligations of the United States, the Webb-Heney bill was finally agreed upon. This bill left to aliens ineligible to citizenship all rights to real property granted by treaty, *but no*

others—except the right to lease land for three years. As the treaty of 1911 did not grant Japanese the right to acquire land, they now had no rights in regard to the acquisition of real property whatever.[1] But all aliens eligible to citizenship were given the same rights to real property as citizens. In this form the Webb-Heney bill passed the senate on May 2, 1913. The European investors had been spared; but the Japanese, less able to defend themselves, were singled out for attack; and they were denied rights granted to aliens from other countries. The assembly also accepted the bill. Despite the opposition of the Panama-Pacific Exposition, of the Asiatic Exclusion League (the members of which believed that the law would hurt the fight for exclusion), and of President Wilson, the bill now became law.[2]

Because of its discriminatory nature, this legislation immediately brought forth protests from Japan. The Japanese Foreign Office emphasized the importance of "the discriminatory phase of the legislation in those affairs of international commercial concern, in which nations usually accord to peaceful and friendly aliens equal treatment, either as a matter of comity or by application of the principle of the most favored nation."[3] These protests, official and popular, led to the revival of war talk. After the remonstrances of the Japanese ambassador, the *Los Angeles Examiner* frantically declared, "Not since the guns of Fort Sumter boomed out over Charleston Harbor in

[1] See my article, "Some Legal Aspects of the Japanese Question".

[2] The land law which went into effect on August 10, 1913, contained the following provisions: (1) aliens eligible to citizenship may acquire, hold and transmit real property in the same manner as citizens of the United States; (2) all aliens "other than those mentioned in section one" may acquire property in the manner prescribed by any treaty now existing between the United States and the country of which the alien is a subject; and in addition, may lease land for agricultural purposes for a term not to exceed three years; (3) any corporation of which a majority of members are aliens ineligible to citizenship, or in which a majority of issued capital stock is owned by such aliens, may acquire land only as prescribed by treaty; (4) any property acquired in violation of this law shall escheat to the State of California.—*1913 California Statutes*, p. 206.

[3] *Foreign Relations of the United States*, 1913, p. 630. See also *ibid.*, 1914, pp. 426-434.

1861 has the nation fronted so serious a threat as it does today."[1] The militarists of America were matched by the militarists of Japan, who silently chuckled at the resentment of their people against California's action. White-Perilism meant larger budgets for the navy!

This land law did nothing more than prevent the acquisition of real property by the Japanese *in the future*. It did not deprive them of land which they already owned. It did not even prevent them from leasing any amount of land they might wish in the future. Although the leasing term was limited to three years, they might legally renew the lease and remain on the land indefinitely. The law, therefore, was absolutely ineffective in removing the Japanese from the land. Efforts were now to be made to make the legislation more stringent.

III

But despite attempts made to abolish the leasing privilege in the 1915 and 1917 legislatures, nothing more was done in regard to the Japanese until 1919. Now that the war had come to an end, and the American Legion had been organized,[2] and a national election was approaching, the Japanese again became a target of attack. Attention was called to the "enormous" increase in acreage made by the Japanese during the war. The acreage owned by the Japanese, which in 1913 was 26,707, had increased in 1918 to 29,105 acres; while the amount held by lease, etc., increased to 336,721. It was alleged that these increases were brought about by subterfuge and the evasion of the law. The means taken by the Japanese to evade the law and acquire title to real property were: (1) by dummy cor-

[1] April 23, 1913.

[2] The head of the Stockton American Legion has testified as follows: "We were the first—I know that we were the first in Stockton—to agitate the question and circulate the anti-Japanese-Asiatic petitions . . . and we feel that we are more or less responsible for the movement in California." — *Hearings,* pp. 475-76. Another witness testified: "Yesterday . . . we were accosted by a young man who wanted us to sign the initiative measure and we started to examine it, when he said, 'It is not necessary to examine it.' We said that we did not want to sign it without reading it, and he said that there was not one in 500 that read it. He said, 'The American Legion is behind this, and the American Legion is behind Senator Phelan.'"—*Ibid.,* p. 570.

porations in which the majority of the stock was held by American citizens (who might be Japanese children born here) but paid for and controlled by Japanese, themselves ineligible to own land;[1] (2) by trusteeships, where Japanese paid American citizens to purchase land and hold it for them or for their children; (3) by guardianships, in which the Japanese parents, as guardians of their American-born children, purchased land in their name, but used it for themselves. The amount of land thus acquired by the Japanese was not very large. In the nine counties of Southern California only 518 acres of farm land and 47 city lots were acquired in the names of Japanese children in the seven years following 1913. Nevertheless, the Anti-Japanese League exhorted against the shocking immorality of the Japanese who stooped to such practices. But they failed to recognize that the evasions had been brought about by American lawyers, and that Americans themselves utilize every possible means of side-stepping laws affecting their own interests.

Furthermore, the state already had the power of dissolving fictitious guardianships. In the case of *People v. Harada*, decided in 1918, the court held that when a Japanese father acquired property in good faith for his children and administered it for their interests, the law could not intervene. This decision was interpreted to mean that the state had no power to dissolve guardianships obtained by Japanese purely to circumvent the land law of 1913.[2] This interpretation, however, was illogical inasmuch as the court, in the case cited, insisted that the guardianship must rest on good faith. But all Japanese guardianships obviously have not rested on that basis. In fact, in the so-called Visalia cases, the court terminated letters of guardianship on the ground that the Japanese concerned had rendered no account of his guardianship; that he had used the property as his own; and that his purpose in applying for letters of guardianship was merely to gain title and

[1] For a list of these corporations, see *Hearings*, pp. 420 *et seq.*

[2] For the case, see *People of the State of California v. Yukiehi Harada et al.*, in the Superior Court of the State of California in and for the County of Riverside, No. 7751. Filed, County Clerk of Riverside, decided October 22, 1918.

control of land which otherwise he could not have.[1] The court declared that it was an absurd construction of the law to hold that the state did not have power to terminate such fictitious relationships.

Despite these decisions which show that the state already possessed the power to deal with this means of evasion, the politicians seized upon it as a pretext to amend the 1913 land law. It was during the Peace Conference at Paris that such action was commenced. On April 1, 1919, two senators asked that the legislature permit the introduction of anti-Japanese bills, one concerning "picture brides" and the other abrogating the leasing provisions of the 1913 land law.[2] The passage of these laws would incense Japanese opinion, as it had formerly done, and at a time when the American peace program might be seriously affected. Consequently the senate committee to which these requests were referred, recommended that they be denied.[3] It was finally decided to continue the consideration of the requests until a cablegram could be sent to the Secretary of State at Paris asking whether or not the introduction of such measures would embarrass the United States at the Conference. Such a dispatch was sent on April 3, 1919, A week later M. Lansing replied that it would be particularly unfortunate to have these bills introduced or pressed at the present time. . . ."[4] As a result of this cable, the senators withdrew their requests and the anti-Japanese legislation was dropped.

[1] *In the matter of the Estate and Guardianship of Fumiko Kawahara,* November 24, 1919; also *In the matter of the Estate and Guardianship of Kimiko Okasaki, et al.,* January 5, 1920. For other cases, see *Hearings,* pp. 873 *et seq.*

[2] The California legislature, which meets biennially, has the unique practice of dividing each session into two parts; in the first part, bills are introduced, after which a recess of a month is taken in which the legislators may learn the opinions of their constituents. According to the Constitution (Article IV, section 2) no bill can be introduced after the reassembling of the Legislature, without the consent of three-fourths of the members of the house. This is why the senators were obliged to ask the consent of the senate to introduce these bills.

[3] *Senate Journal,* 1919, p. 999.

[4] *Senate Journal,* 1919, p. 1277. On April 10th, the senate replied to Lansing urging federal action in regard to Japanese immigration (p. 1377).

But the "people" felt no such responsibility to the nation. After the Peace Conference was terminated by the signature of the Treaty of Versailles on June 28, 1919, the diplomatic restraints which had been clapped on anti-Japanese talk were thrown to the winds. The Hearst papers and the anti-Japanese politicians again raised the spectres of Japanism—land monopolies—increasing Japanese immigration—picture brides—Emperor worship and dual citizenship. The Immigration Hearings in Washington, held to frame a new policy for the United States, gave Senator Phelan and others an opportunity to harp *ad nauseam* on the Japanese menace to the country. But it was Japanese imperialism which really fed the fires of anti-Japanese agitation. The universal indignation at the award of Shantung to Japan and cumulative evidence of the broken pledges of Japan in international affairs increased the suspicion of many honest people in California that Japan would show no scruples in violating the Gentlemen's Agreement, the only bar to an inundating wave of Orientalism. It made little difference to the popular mind that the berry hucksters who plowed California's fields had nothing to do with Japanese imperialism. For all that they knew, the Japanese government might be using them to accomplish by covert means what it was more openly doing in Korea, Manchuria and Siberia! The responsibility, therefore, for a large share of anti-Japanese agitation in California is due to the militarists of Tokyo.

In September, 1919, a committee was appointed to revive the old Exclusion League, which had been dormant since 1909.[1] Once organized it secured the affiliated membership of such organizations as the American Legion, the State Federation of Labor, and the Native Sons and Daughters. It adopted this "five-point" program:

1. Cancellation of the "Gentlemen's Agreement."
2. Exclusion of "Picture Brides."[2]

[1] *Los Angeles Examiner,* September 18, 1919.

[2] When a Japanese resident in the U. S. has been too poor to return to Japan and find a wife, he has arranged for his relatives, etc., to pick out a bride and to have a proxy marriage ceremony performed in Japan, whereupon the "wife" proceeds to the United States to join her husband. Her picture is sent on

3. Rigorous exclusion of all Japanese as immigrants.

4. Confirmation and legalization of the policy that Asiatics shall be forever barred from American citizenship.

5. Amendment of the Federal Constitution providing that no child born in the United States shall be given the rights of an American citizen unless both parents are of a race eligible to citizenship.

This organization, as well as many of the members of the state legislature, now demanded that Governor Stephens call a special session of the state legislature. The governor refused, his position being that no action should be taken until the State Board of Control should conclude an investigation of the Japanese situation which it had just undertaken. His refusal to call a special session took a tremendous amount of courage, for it brought down upon his head abuse from organs such as the *Grizzly Bear*, which demanded the recall of the governor and of all the other "pro-Japs in California", in order that the state might remain what "it has always been and God Himself intended it shall always be—the White Man's Paradise." [1]

But even such diatribes did not shake the governor in his determination not to call a special session that would, to use the words of the *San Francisco Chronicle*, only "complicate international relations" and be a "waste of the public money." [2]

Having failed to secure a special session of the legislature, the anti-Japanists now turned "to the people." Despite the journeys of different "peace" commissions to Tokyo, one going from the San Francisco Chamber of Commerce,[3] the

ahead, hence the name "picture bride". The Japanese Government refused to issue passports to "picture brides" after February 29, 1920, as a concession to American sentiment against the practice. But apparently this prohibition did not apply to passports to "picture brides" to Hawaii, since in its report to the Secretary of Labor, released January 25, 1923, the Hawaiian Labor Commission emphatically recommended that the importation of "picture brides" be stopped, because "these practices have defeated the purpose of the so-called 'Gentlemen's Agreement'".

[1] *Grizzly Bear*, March, 1920.

[2] October 30, 1919.

[3] See the interview with Mr. Wallace Alexander, *San Francisco Call*, April 26, 1920.

propaganda against the Japanese showed no signs of abatement. The agitation was aided by the report of the State Board of Control, entitled *California and the Oriental*, which appeared in June, 1920; and by the hearings conducted by the House Committee on Immigration and Naturalization on the Pacific Coast in July and August, 1920. While the facts brought out in both inquiries were, for the most part, correct, they were immediately misinterpreted by "anti-Jap" agitators; and the House hearings allowed some people to write their views on the pages of a government document, when otherwise they would have obtained little publicity.

As a result of this movement, two initiative measures were placed upon the ballot for the general election of November, 1920. The first was an amendment to the land law of 1913. It deprived aliens not eligible to citizenship of the right to lease agricultural land; it prevented a Japanese alien from acting as guardian for a minor, even if born in this country and an American citizen, when his estate consisted of property which the Japanese himself could not hold under the law. It punished every "colorable" transfer of property, made to evade the law; a transfer was presumed to be "colorable" if an American acquired real property when a Japanese furnished the money with which to buy it; or when a corporation acquired real property when a majority of its stock, although held by Americans, was actually paid for with Japanese money.[1]

The second measure provided for a poll tax of ten dollars on male aliens resident in California, and for their registration.[2] This measure was aimed primarily at the Japanese, since, with the possible exception of the Mexicans, they are the largest group of aliens in the state. The Exclusion League was apparently ignorant of the provision of the treaty of 1911, which guarantees that Japanese in this country "shall not be compelled, under any pretext whatever, to pay any charges or taxes other or higher than those that are or may be paid by native citizens or subjects."[3]

[1] 1921 *Calif. Statutes,* pp. lxxxvii–xc.

[2] *Ibid.*, ch. 424, enacted to carry out the constitutional amendment adopted at the polls.

[3] Article I, par. 2, Treaty of 1911, Charles, *op. cit.*

There was little of general interest in the campaign waged to secure the adoption of these two measures at the polls. The Hearst papers, the Exclusion League, and the American Legion led the movement against the Japanese. The latter organization not only entered vigorously into a political campaign, but it used methods which cannot be too strongly condemned. It sponsored one of the most vicious examples of propaganda ever witnessed in the state—a moving picture, entitled *Shadows of the West.* Graphically illustrating every charge made against the Japanese, this picture depicted a ridiculously mysterious room fitted up with a wireless apparatus by which a head-Japanese ticked out prices which controlled a state-wide vegetable market! It showed Japanese dumping fish and vegetables into harbors in order to keep prices high. Worse still, it invented a Japanese spy system, and it "exposed" the headquarters of a secret government. It did not hesitate to appeal to the deepest instincts of racial prejudice by picturing the abduction of two white girls by Japanese; an attempted assault; and a melodramatic rescue by the "legion boys" after a bloody race war! Furthermore, local posts of the Legion, notably in the Imperial valley, deliberately interfered with meetings conducted by those opposed to the anti-alien land law.[1]

Politicians also profited by the anti-Japanese issue. Candidates for Congress and the Senate could not denounce the Orientals too strongly, because the latter had no votes! The presidential candidates were more restrained—they realized the international issue at stake. Both Mr. Harding and Mr. Cox said the question must be settled by measures "consistent with our national honor."[2]

It was a foregone conclusion that the land law would pass. Leaders of the Exclusion League prophesied that it would carry 9 to 1. Many citizens believed that it would remove the Japanese from the state. Others realized that the land law would not solve California's Japanese problem, because it

[1] *El Centro Progress,* October 23, 1920; *Calexico Chronicle,* October 23, 1920.

[2] "The Japanese Question in the Campaign", *Literary Digest,* Oct. 9, 1920.

would not necessarily remove any Japanese from the state or even, because of constitutional reasons, drive them off the land. But people nevertheless voted for this law because they felt that if it was defeated, the remainder of the country would believe that California had no grievances against the Japanese. The alien land law measure was in reality, therefore, an exclusion measure. It is safe to say that ninety per cent of the arguments made in the campaign had nothing to do with the Japanese on the land, but with the racial differences between Orient and Occident—which the law in no way remedied. In view of these different circumstances, it is surprising that the land law did not carry by a greater majority than it received. When the votes were counted, it was found that the law had received 668,483 votes, while 222,086 were cast against it.

Thus the last popular demonstration against the Japanese on the Pacific Coast came to an end. But its effects were left upon the state legislature, the members of which had made extravagant anti-Japanese election pledges. This body considered a bill appropriating $50,000 for the purpose of spreading "anti-Japanese" propaganda throughout the country. To the credit of the legislature, it failed to become law. The only definite action taken was the passage of a bill regulating foreign-language schools[1] and several resolutions asking the federal government to bring about the absolute exclusion of Japanese immigration.[2]

The actual attitude of the politicians toward the Japanese was revealed when a bill was introduced barring Japanese from fishing in the coastwise waters of the state. This bill passed the senate by a vote of 30 to 4. But when it came before the assembly a tremendous protest was made, not by Japanese, but by American cannery men who realized that this law would kill the cannery business of the state, which was dependent on Japanese fishermen.[3] As a result of this opposition, the assembly tabled the bill. The legislature previously had passed land

[1] Section 1534, Calif. Pol. Code.

[2] 1921, *Calif. Statutes*, p. 1774.

[3] See *California and the Oriental*, Report of the State Board of Control, p. 96; also *Los Angeles Examiner*, April 17, 1921.

and other legislation which did no material damage to anyone except the Japanese. But now a measure had come before it which would actually injure American capital. The racial, political and economic "menace" of the Japanese in the fisheries was just as great to the state as was the "menace" of the Japanese in agriculture. Yet the legislature refused to pass any anti-Japanese laws which might hurt the pocketbooks of Americans. Racial antagonism is all right until it becomes expensive—then people choose to be "liberal."

IV

The last chapter in the anti-Japanese movement on the Pacific Coast has been written since the campaign of November, 1920. In the summer of 1921, Japanese contractors under-bid the American Fruit Workers' Union, an organization of "fruit tramps," in the melon fields of Turlock, California. White farmers insisted that the union asked a price they could not afford to pay, and they continued to employ Japanese. On the night of July 18, a band of several hundred white men, by means of motor trucks and with the apparent connivance of the police, aroused 58 Japanese laborers from their beds, placed them on board a freight train, and warned them not to return. Although the mob was armed, no violence was employed, obviously because the Japanese offered no resistance.[1] The Turlock incident was a direct result of the campaigns of incitement against the Japanese which have featured in many California elections. These working men merely carried into action the sentiments which the politicians had limited to talk. The incident shows, moreover, that the means employed by the Pacific Coast to "solve" its Japanese problem merely increase the ill-feeling between the Oriental and the whites, and still further alienate the Japanese from American life.[2]

Within recent months, the futility of these anti-Japanese

[1] *Farmers' Daily Journal,* July 19, 20, 21, 22, 1921; *San Francisco Call,* July 22, 1921.

[2] As to the effect on the relations of Japan and the United States, see R. L. Buell, *The Washington Conference* (1922), p. 362.

campaigns has been demonstrated from another angle. The state supreme court has declared the alien poll-tax unconstitutional because of the treaty of 1911 with Japan, and the Fourteenth Amendment to the Constitution of the United States.[1] Although federal courts have upheld the constitutionality of the chief provisions of anti-alien land legislation,[2] they have upheld the legality of "croppage contracts" through which Japanese farmers may continue to use California's farm land as long as they and the white owner may wish.[3] The state cannot prohibit such contracts because of the Fourteenth Amendment, which protects aliens and citizens in certain rights.[4] Moreover, the state supreme court has declared unconstitutional the provision of the land law that a Japanese alien cannot serve as a guardian for a minor born in the United States.[5] The land legislation may therefore be evaded through "croppage contracts" and through guardianships. For constitutional reasons, it has been rendered ineffective.

A Solution

As brought out in the last few pages, the fundamental cause for the agitation against the Japanese on the Pacific coast has been the demand for the exclusion of Japanese immigration. The necessity for exclusion is now universally recognized. But the *means* now utilized to enforce exclusion—the Gentlemen's Agreement—is, from the popular standpoint, inherently unsatisfactory. The enforcement of this Agreement, whose very terms, incidentally, are not known to the public, is in the hands of Japan alone. She promises to keep her laborers at home, although non-laboring classes may enter this country. But we are apparently forced to accept Japan's interpretation of what

[1] *Ex parte Terui,* 200 Pac. 954; *Ex parte Kotta,* 200 Pac. 957.

[2] *Terrace v. Thompson,* 274 Fed. 841; *Porterfield v. Webb,* 279 Fed. 114; *Frick v. Webb,* 281 Fed. 407.

[3] *O'Brien v. Webb,* 279 Fed. 117.

[4] *Cf.* Sec. 1977 of the Revised Statutes; *In re Tiburcio Parrott,* 1 Fed. 481, 509; *Truax v. Raich,* 239 U. S. 33; *Coppage v. Kansas,* 236 U. S. 1; *Lem Moon Sing v. the U. S.,* 158 U. S. 538; *Yick Wo. v. Hopkins,* 118 U. S. 356.

[5] *In re Estate and Guardianship of Yano,* Calif. Dec., May 5, 1922, No. 3348, p. 520.

constitutes a "laborer"; and we are forced to accept every passport issued to Japanese coming to America.[1] We have no means of telling whether Japan is keeping her word; we have no part in enforcing the Agreement. The popular distrust of such a one-sided arrangement, into we have entered with no other nation, is increased with the militaristic nature of Japan's government and its violation of past promises in the Orient.

A good deal of paper has been wasted to prove that emigration of Japanese to the United States has actually declined under the Gentlemen's Agreement. A great deal of paper has been wasted in figuring out the increases of the Japanese population in the United States, and in making absurd deduc-

[1] In a letter to Senator Phelan, May 22, 1916, Secretary of Labor Wilson defended the agreement as follows: "If it is found in any case (and I am glad to say that this department's experience has been that such cases are extremely rare) that a passport to the United States has been issued by Japanese authorities inadvisedly or erroneously, the matter is promptly brought to the attention of the Japanese government through diplomatic channels, with request that proper steps be taken to prevent any recurrence of the mistake. Requests of this sort have always received prompt and careful attention."—*Cong. Record,* vol. 54, pt. I, p. 254. Yet even this statement is an admission that the final authority in the matter is the Japanese government alone.

But apparently Secretary Wilson's Commissioner General of Immigration did not agree with him. In the Report of the Commissioner General of Immigration for 1920, Mr. Caminetti has this to say about the Gentlemen's Agreement: "The too general terms of the agreement itself and the *ex parte* determination by officials of Japan, both in that country and in the United States, of matters arising under its terms, have not been conducive at all times to the production of the results anticipated by both countries when the agreement was conceived. Not only is clarification of the agreement needed if its main purpose in keeping laborers from coming to the United States is to be effected but systematic enforcement thereof by joint administrative effort, not only with relation to the mainland but to our island possessions as well, should be brought about by both nations. Frauds against both would thereby be materially checked if not entirely prevented and the rights of all concerned protected."—*Department of Labor, Annual Reports for 1920,* p. 299.

Before 1917 either the Japanese government or the President of the United States could terminate the Gentlemen's Agreement, with the result that Japanese immigrants could then enter this country as freely as any other immigrants, being subject only to our general immigration laws. But in order to prevent this, Congress inserted a clause in section 3 of the Act of February 5, 1917, which read: "And no alien now in any way excluded from, or prevented from entering the United States shall be admitted to the United States." Thus in the event of the termination of the Agreement by executive action, our immi gration officials would have power to exclude the Japanese.

as to the consequence of such increases.[1] But these mathematical acrobatics don't get anywhere. At present the Japanese constitute only three per cent of the population of California, and they control only two per cent of the farm land in the State. While it is true that their birth rate is three times that of the whites and that when working for themselves, they will accept lower prices than Americans, there is absolutely no racial characteristic which is responsible for either of these traits. If their standard of living is raised by the processes of Americanization, those traits which are due to economic causes will disappear.[2] But at present, the Pacific Coast will have nothing to do with an Americanization program for the Oriental because of the fear that, under the Gentlemen's Agreement, the Japanese population is increasing. And it realizes well enough that it will be impossible to Americanize, even to the slightest extent, a steady stream of Oriental immigrants.

There are four possible ways of "solving" the problem. The first is by amending the terms of the present Gentlemen's Agreement, so as to limit more strictly the classes of Japanese who may enter this country. But mere tinkering with the Gentlemen's Agreement will not alter its fundamental defect—Japan's sole responsibility for administering its terms.

The second is by the passage of a Japanese exclusion law, similar to that which now excludes the Chinese.[3] But an exclusion law would violate the policy which originated with President Roosevelt's stand against such legislation in 1905. Ever since 1911 general immigration bills have contained a clause barring immigrants "ineligible to citizenship", unless already excluded by treaty or agreement.[4] But at Japan's

[1] For a complete statement of the anti-Japanese case, see "Japanese Immigration and Colonization", *Senate Document 55,* 67th Congress, 1st sess.

[2] In Hawaii, the Japanese have a birth rate lower than that of some other races. See the table, *Survey of Education in Hawaii,* Department of the Interior, Bureau of Education, Bulletin No. 16, 1920, p. 15. See also *Immigration Commission Reports,* vol. 28, "The Fecundity of Immigrant Women", pp. 146, 805; Commons, *Races and Immigrants in America* (1904), p. 203.

[3] *Cf.* Chinese Restriction Act of 1882, 22 Stat. 61, and Act of 1904, 33 Stat. 394.

[4] See statement by W. W. Hubbard, Commissioner General of Immigration, in Jenks and Lauck, *The Immigration Problem* (1922), p. 434.

protest against the mere use of these delicate words, although they did not change the status of Japanese immigration, they have always been dropped. In the immigration bill introduced into Congress on March 30, 1916 (H. R. 10384) there was a provision which would exclude Hindus and persons who cannot become eligible to citizenship "unless otherwise provided for by existing agreements as to passports or by existing treaties, conventions or agreements, or by treaties, conventions, or agreements that may hereafter be entered into."[1] But the Japanese government again protested against the use of the words "ineligible to citizenship."[2] And as a result, the final act of February 5, 1917, omitted this clause and substituted for it the "Barred Zone" provision, which excludes aliens from within certain degrees of latitude and longitude.[3] Amendments proposed by Senators Phelan and Poindexter barring "picture brides" and aliens ineligible for citizenship were rejected for the same reason.

Apparently indifferent or oblivious to this policy, the House Committee on Immigration has virtually written an exclusion law into the new immigration bill.[4] On February 5, 1923 this committee adopted a plan which would exclude all immigrants "not eligible to citizenship", with the exception of a few specified classes such as government employees and tourists. This measure goes much farther than the original immigration bill of March, 1916. It not only uses the phrase "not eligible to citizenship" but it actually excludes Japanese, when hitherto they have been excepted because of an "existing agreement" covering their immigration. In other words, it is a Japanese exclusion law. If enacted, it would be a violation of the treaty with Japan of 1911. Article I of this treaty says that the citizens and subjects of each of the high contracting parties shall

[1] See *H. R. Reports,* vol. I, no. 95, 64th Cong., 1st sess., January 13, 1916. Also letter of Secretary of Labor Wilson, May 22, 1916, *Cong. Record,* vol. 54, p. 254.

[2] New York *Times,* Feb. 8, 1916; April 22, 1916; April 25, 1916.

[3] *Senate Reports,* vol. II, no. 352, April 17, 1916; 39 Stat. Ch. 29, sec. 3, p. 876.

[4] *Cf.* H. R. 12237, 67th Cong., 2nd sess.; New York *Times,* February 6, 1923.

have liberty to enter, travel and reside in the territories of the other. Laborers are not excepted from this rule, as they were in the treaty of 1894. The treaty of 1911 is merely accompanied by a Declaration in which Japan promises to continue the Gentlemen's Agreement in force.[1] An exclusion law would certainly violate the terms of this treaty, granting Japanese liberty to enter and reside in this country, as long as the treaty is in existence.

An exclusion law would be an affront to the Japanese people, who are racially self-conscious to a much greater extent than Anglo-Saxons; it would be a weapon in the hands of the Japanese military party and might be used to convince the Japanese people that American "liberalism" is meant, not for the colored races, but for the Nordics alone. At the Paris Peace Conference, the American Delegation was partly responsible for the defeat of a "racial equality" clause which the Japanese representatives proposed for incorporation in the Covenant of the League of Nations. This clause would guarantee "to all alien nationals of States Members of the League, equal and just treatment in every respect, making no distinctions, either in law or fact, on account of their race or nationality."[2] Despite the fact that this clause could easily be interpreted to have nothing to do with immigration, it was defeated principally by the United States. But because of this position, the American delegation could not very well hold out against Japan's claims to Shantung. Having defeated Japan's claim to racial equality, the American delegation was forced to make concessions elsewhere. In a similar manner, the Japanese government may use an exclusion law to secure concessions from us in its foreign policy. In 1913 and 1914 Japan protested vigorously against a state discrimination—the California Land Law. But if an exclusion law is enacted, similar to the one which the House Committee has just proposed, the discrimination becomes national, and Japan's basis for a protest will become greater than ever. If there is any possible means of avoiding

[1] Charles, *Treaties and Conventions of the U. S.*, p. 82.

[2] R. S. Baker, *Woodrow Wilson and World Settlement* (1922), vol. II, p. 234.

it, the United States cannot afford to jeopardize the good feeling established at the Washington Conference between Japan and America, by the passage of this legislation.

A third means of "remedying" the evils of Japanese immigration would be by applying the principles of our "percentage" legislation to the Japanese. According to the Immigration Restriction Act of May 19, the number of immigrants of any nationality who may be admitted to the United States in any fiscal year is limited to three per cent of the number of foreign-born persons of such nationality resident in the United States, as determined by the census of 1910. But the provisions of this Act do not apply to "aliens from countries immigration from which is regulated in accordance with treaties or agreements relating solely to immigration"—in other words, immigration from Japan.[1]

This exception was apparently made because of the belief that the Gentleman's Agreement more effectively excludes the Japanese than would the three per cent restriction. But this has not proved to be true. In 1910, there were 67,744 foreign-born Japanese in continental United States and 59,786 in Hawaii—a total of 127,530,[2] three per cent of which would be 3826, the number of Japanese eligible to admission if the Percentage Act applied to them.[3] But under the Gentlemen's Agreement, 9279 Japanese were admitted in 1920 and 7531 in 1921,[4] or twice the number that would be admitted under a general Restriction Act.

In the bill adopted by the House Committee in February, 1923, it was proposed to adopt the census of 1890 as a basis, and to admit only two per cent of the numbers here, as based

[1] *U. S. Statutes,* 67th Congress, 1st sess., ch. 8, sec. 2 (5).

[2] *U. S. Census, 1910,* vol. I, p. 781; vol. III, p. 1160.

[3] The Act of May 19, 1921 defines the United States so as to include any waters, territories, or other places subject to its jurisdiction, except the Canal Zone and the Philippines. But if the Act had been intended to apply to the Japanese, Hawaii would have doubtless been also excluded, because of the excessive number of Japanese there. If the population only of the foreign-born Japanese in continental United States were considered, the number who could be admitted annually would be 2032 instead of 3826.

[4] *Statistical Abstract of the U. S., 1921,* p. 107.

on that census. If this plan should be extended to the Japanese, they would be excluded nearly as effectually as under an exclusion law. In 1890 there were only 2292 persons in this country who had been born in Japan, two per cent of which number would be forty-six[1]—surely not much of a Yellow Peril! The advantage of applying the percentage plan to the Japanese is that it would be non-discriminatory; the Japanese would be on exactly the same basis as the European immigrant.[2] But this type of immigration restriction is not likely to be permanent; manufacturers and capitalists are already demanding freer immigration of European laborers. If Congress is induced to let down the bars in this respect, the question of Japanese exclusion would again arise.

The best means, therefore, of handling this question is through a treaty. An exclusion treaty would accomplish the same end as an exclusion law, but without offense to Japan. A treaty is a bilateral agreement; it is brought about by the joint and friendly discussion of two governments. If made reciprocal, an exclusion treaty would be non-discriminatory. It should apply to American labor wishing to go to Japan and Japanese labor wishing to come to America. This treaty should guarantee to Japanese residents already in this country most-favored-nation treatment in all *civil* rights, and make them eligible to American citizenship on the same basis as any other aliens.[3] Japanese born in this country are already citizens under the fourteenth amendment. If Japanese immigration is effectively prohibited in the future no conceivable danger would arise from giving the vote to a few thousand additional Japanese.[4] The concession of such a privilege would be added

[1] *U. S. Census, 1890,* vol. I, p. 609.

[2] A similar plan was originally suggested by Dr. S. L. Gulick, *The American Japanese Problem* (1914), ch. xvii.

[3] The British Empire has solved the question of Hindu immigration on somewhat the same basis as this. Each dominion may exclude Hindus; but once they are admitted, they should be granted citizenship. See *Work of the Prime Ministers, Official Report; Transactions of the Imperial Conference, 1921;* "Position of British Indians in the Empire", *Round Table,* no. 44, p. 756.

[4] The Japanese population in continental United States in 1920 (*U. S. Census, 1920,* vol. III, p. 11) was 111,010. But this included American-born Japanese,

incentive for them to adapt themselves to American life.[1] But the greatest advantage of such a concession is that it would prove to the Japanese people that we insist on exclusion, not because of racial inferiority, but because of racial difference.

The treaty of 1911 was negotiated only for a period of twelve years. It will therefore expire on July 17, 1923; and negotiations of some sort must shortly take place.[2] If the American State Department should attempt to negotiate such a treaty, it is practically certain that it would now meet with the approval of Japan. Such a treaty would meet Japan's objection against discrimination. And the Japanese government would doubtless realize that if it refused to agree to such a treaty, Congress would probably pass an exclusion law, which is the last thing the Japanese desire.

minors and others who could not meet the general naturalization tests, or who would not choose to become naturalized. In California there were 47,566 Japanese over twenty-one in 1920 (*ibid.*, p. 128); but it is doubtful if half of them would become citizens if eligible.

[1] On the question of assimilation, see L. Aubert, *Américains et Japonais*, (1908), ch. iv.

[2] Article XVII, Treaty of 1911.

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